IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.MMO No.69 of 2007.

Date of decision:22.11.2007

Jagdeep Kumar and others ....Petitioners

-Versus-

State of H.P. ….Respondent

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting?

For the Petitioners: M/s.Rakesh Jaswal and Nareshwar Chandel, Advocates.

For Respondents: Mr.J.S.Guleria, Law Officer.

Deepak Gupta, J.(Oral)

This petition under Section 482 of the Code of Criminal Procedure is directed against the order dated 17.1.2006 passed by learned JMIC (3), Shimla taking cognizance of FIR No.109/96 registered against the petitioners under Sections 451, 147, 323, 294 and 506 IPC.

The petitioners were summoned by the learned Magistrate. Thereafter, the petitioners filed an application under Sections 91, 239 and 240 of the Code of Criminal Procedure to place on record certain documents and alleged that they have been acquitted in respect of the same incident which form the subject matter of this FIR. This application was rejected vide order dated 6.7.2007. The learned trial Court held that it had no jurisdiction to recall its earlier

order summoning the accused and once the accused had been summoned the trial had to go on. The Court further held that it had no power to discharge the accused. Hence the present petition.

The brief facts necessary for decision of the case are that Sh.Balwant Singh Rohal filed a complaint with the Railway Police Station, Shimla on 11.12.1995 which was registered as FIR No.7 of 1995. In this complaint it was alleged that on 11.12.1995 the petitioners herein had beaten up the 'Chachi' and 'Bua' of the complainant. It was further alleged that Sh.Mohan Singh Rohal father of the complainant went to Police Station, Boileauganj to lodge a report. The complainant and other relatives were waiting at the Railway Station. At that time the petitioners came and attacked the complainant, his Uncle, Ajit Singh, Sanjiv, Jai Singh etc. who all received injuries.

It would be pertinent to mention that on the same date i.e. 11.12.1995 a complaint was lodged at the instance of Sanjay Kumar one of the petitioner herein with the Railway Police Station, Shimla that he and the other petitioners were beaten up by Jai Singh, Amar Singh, Mohan, Balwant Rowal etc. This was registered as FIR No.8 of 1995. It is, therefore, clear that two cross complaints were lodged in respect of the same incident.

Both the complaints were tried together by the learned Additional Sessions Judge, Shimla. The present petitioners were acquitted by the learned Additional Sessions Judge, Shimla vide his judgment dated 30.10.2000. In the case arising out of FIR No.8 of

1995 the accused Ajit Singh, Mohan Singh Rohal etc. complainants in FIR No.7/95 were also acquitted on the same date.

In the meantime, Anupama d/o Ajit Singh sent a letter to the Chief Minister, State of Himachal Pradesh on 7.6.1996. This complaint related to the same offence which was alleged to have been taken place on 11th December, 1995. Apparently, reference was made by the office of the Chief Minister to the police and on this another FIR No.109/96 was lodged against the petitioners at Police Station, Boileauganj. In this FIR, cancellation report No.7/97 was presented by the police to the Chief Judicial Magistrate, Shimla. The complainant was summoned to the Court and objected to the cancellation report and thereafter the Chief Judicial Magistrate vide order dated 22.8.1999 ordered re-investigation in FIR No.109/96.

After reinvestigation fresh report was submitted by police in the Court of JMIC(3) Shimla on 21.9.2000. It is not clear as to what happened in between 21.9.2000 and 17.1.2006 but it is only on 17.1.2006 that the Magistrate took cognizance on the complaint.

I have gone through the FIR No.109/96 as well as FIR No.7/95. It is apparent from a perusal of the averments made in both the FIRs that both the FIRs relate to the same incident which took place on 11th December, 1995. This is also apparent from the statement of Kumari Anupama d/o Shri Ajit Singh recorded by the Additional Sessions Judge, Shimla in case filed against the petitioners arising out of FIR No.7/95.

The essence of the incident is that some altercation took place between the two groups one consisting of petitioners Jagdeep and others and the other consisted of Mohan Singh, Ajit Singh etc. Out of this incident two FIRs No.7 & 8 of 1995 were registered with the Police Station, Railway Station. On the complaint of Kumari Anupama made to the Chief Minister a separate FIR was registered six months later on 10.6.1996 in respect of the same incident at Police Station Boileauganj. No doubt different offences have been mentioned in the FIR. However, when the incident is the same two separate FIRs in respect of the same incident could not have been recorded.

It is well settled position of law that no person can be tried twice for the same offence. Article 20(2) of the Constitution of India provides that no person can be prosecuted for the same offence more than once. The principle of double jeopardy is a well established principle of Criminal Jurisprudence. Even if the Investigating Officer felt that the accused could be charged with other offences arising out of the same incident he could have filed a supplementary challan or the charge-sheet could have been amended in the original case itself but in respect of the same incident the accused could not be tried twice just by recording two separate FIRs.

Further in this case, I find that the incident is alleged to have taken place on 11th December, 1995. The learned Magistrate took cognizance of offence on 17th January, 2006. The learned Magistrate gravely erred in taking the cognizance of FIR No.109/1996 and

issuing summons to the petitioners more than 10 years after the incident. Not only could they could not have been tried for the same offence again but such action could not have been taken at such a belated stage. The petitioners were charged for offences punishable under Sections 451, 147, 323, 294, 506 IPC. The maximum punishment in case of the offence punishable under Section 451 is 2 years; in respect of the offence punishable under Section 294 the maximum punishment is 3 months; the maximum punishment under Section 323 is one year and in respect of Section 506 is 2 years. It is thus obvious that in terms of Section 468 the limitation even in respect of the offences which were punishable upto 2 years is 3 years. The offence took place on 11.12.1995 and cognizance could not have been taken after 10 years since the limitation was only 3 years.

Keeping in view the aforesaid discussion the petition is allowed and the criminal proceedings arising out of FIR No.109/96 are quashed and the orders of the learned Judicial Magistrate dated 17.1.2006 and 6.7.2006 are set-aside.

November 22, 2007 **(Deepak Gupta),**
PV **Judge.**